

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	DELANO CARROL NELSON,)	Case No. CV 12-05761 JC
12	Plaintiff,)	
13	v.)	MEMORANDUM OPINION AND
14	UNITED STATES AND DOES)	ORDER DISMISSING ACTION
15	1 THROUGH 10, INCLUSIVE,)	
16	Defendants.)	

On July 3, 2012, plaintiff initiated this action by filing a Complaint for Damages. On September 4, 2012, defendant United States filed an Answer. The parties have consented to proceed before the undersigned United States Magistrate Judge.

On January 7, 2013, the Court held a scheduling conference and set dates in this action, including a non-expert discovery cut-off deadline of April 15, 2013.

On March 12, 2013, defendant filed a Motion to Compel, seeking to compel plaintiff to respond to discovery requests which were propounded in October 2012 and as to which responses were due in November 2012. Contrary to Local Rule 37-1, plaintiff's counsel did not confer with defendant regarding the substance of such motion. The Motion to Compel was noticed for hearing on April 9, 2013 at 10:00 a.m. Plaintiff did not file a response or opposition to the Motion to Compel.

1 On March 29, 2013, this Court set a status conference for April 9, 2013 at
2 10:00 a.m., ordering all counsel of record to appear.

3 On April 9, 2013, the case was called for a hearing on the Motion to Compel
4 and a status conference. Contrary to the March 29, 2013 Order, neither of
5 plaintiff's attorneys appeared. In response to the Court's inquiry, defendant's
6 counsel represented that despite the April 15, 2013 non-expert discovery cut-off,
7 plaintiff had propounded no discovery and had essentially done nothing on the
8 case.

9 Accordingly, on April 9, 2013, the Court issued an order ("OSC") directing
10 plaintiff, by not later than April 19, 2013, to show cause why this action should not
11 be dismissed for failure to prosecute and/or the failure to comply with a Court
12 order. The OSC expressly cautioned plaintiff that the failure timely to respond to
13 the OSC and/or to show good cause would result in the dismissal of this action for
14 lack of prosecution and/or the failure to comply with Court orders. The deadline to
15 file a response to the OSC and to show good cause as to why this action should not
16 be dismissed has now expired. To date, plaintiff has not filed a response to the
17 OSC and has not otherwise communicated with the Court or shown good cause as
18 to why this action should not be dismissed.

19 It is well-established that district courts have authority to dismiss a plaintiff's
20 action because of his failure to prosecute or to comply with court orders. See Fed.
21 R. Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962); Ferdik v.
22 Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915 (1992). In
23 determining whether to dismiss an action for failure to prosecute or failure to
24 comply with court orders, a district court must consider several factors: (1) the
25 public's interest in expeditious resolution of litigation; (2) the court's need to
26 manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
27 favoring disposition of cases on their merits; and (5) the availability of less drastic
28 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to

1 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

2 After weighing each of these factors, the Court finds that dismissal of this action
3 without prejudice based on plaintiff's failure to prosecute this action and failure to
4 comply with Court orders is appropriate.

5 Accordingly, it is ORDERED that this action is dismissed without prejudice.

6 DATED: April 22, 2013

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8 /s/

9 Honorable Jacqueline Chooljian
10 UNITED STATES MAGISTRATE JUDGE
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